



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (June 2004)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services

Subject of possible rule making:

The department is amending chapter 388-02 WAC to clarify, in accordance with case law and commonly accepted legal principles, which department program rules apply when the parties challenge action that the department may be taking against them.

Statutes authorizing the agency to adopt rules on this subject: RCW 34.05.020

Reasons why rules on this subject may be needed and what they might accomplish:

The current rule states that administrative law judges and review judges must apply the program rules in effect on the date the department sent notice of its intended action to the parties. This is not consistent with case law stating that the date of agency conduct or action determines which law applies. It is also not consistent with the department's due process obligation to send parties advance notice of department action prior to the effective date of the action and the amended rules on which the action is based. The proposed amendments to WAC 388-02-0220(3) and WAC 388-02-0010 resolve these inconsistencies. The proposed amendments also enable application of program rules amended due to budget shortfalls, which may become effective after the date of the department's notice but before (or on) the date of the department's action.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:

The Department is coordinating this rule making with the Washington State Health Care Authority, which is making similar changes to hearing rules governing Medicaid-funded programs.

Process for developing new rule (check all that apply):

- ☐ Negotiated rule making
- ☐ Pilot rule making
- ☐ Agency study
- ☒ Other (describe)

DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the Office of the Code Reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

How interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication:

(List names, addresses, telephone, fax numbers, and e-mail of persons to contact; describe meetings, other exchanges of information, etc.). Contact:

Diamanta Tornatore and James Conant
P.O. Box 45803
Olympia, WA 98504-5803

Phone: 360.664.6061/664.6081 Fax: 360.664.6187 TTY:
E-mail: tornadl@dshs.wa.gov/conanjw@dshs.wa.gov

DATE
January 10, 2012

NAME (TYPE OR PRINT)
Katherine Vasquez

SIGNATURE

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 11, 2012

TIME: 8:56 AM

WSR 12-03-048